

NONCRIMINAL JUSTICE BACKGROUND CHECKS

Process Improvement Study

**A Report to the House Committee on Health, Welfare and
Institutions and the Senate Committee on Rehabilitation and
Social Services**



October 2018

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TO: The Honorable Bryce E. Reeves
Chair of the Senate Rehabilitation and Social Services Committee

The Honorable Robert D. Orrock, Sr.
Chair of the House of Delegates Health, Welfare, and Institutions
Committee

Pursuant to Senate Bill 716, Chapter 662 of the 2018 Acts of Assembly, I am respectfully submitting herewith a report concerning the Department's study of *Noncriminal Justice Background Checks*.

Respectfully,

A handwritten signature in cursive script that reads "Gary T. Settle".

Superintendent

GTS/KCH/

Enclosure

Preface

Chapter 662 of the 2018 Acts of Assembly directs the Department of State Police (the Department) to “identify, analyze, and recommend options to expedite and improve the efficiency of its process for performing requested background checks [and]...report its findings and recommendations to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services by November 1, 2018.” Pursuant to this requirement, the Department’s Criminal Justice Information Services Division has thoroughly studied our current processes and identified opportunities to significantly enhance the delivery of criminal justice information to noncriminal justice agencies that rely upon it to ensure the safety of the citizens of the Commonwealth, as described in detail below.

Executive Summary

The Department processes almost 500,000 noncriminal justice background checks each year to provide a measure of safety and security for the citizens of the Commonwealth when determining who should be allowed positions of public trust or access to vulnerable populations such as children, the elderly, and the disabled. Because of the large volume of background checks, the lack of automation of the Department’s processes, and the complexity of the statutory scheme, it can take as long as three weeks to fill these requests. Often, this delay is intolerable for those with urgent needs. While the Department attempts to prioritize such exigencies, it is not possible to efficiently meet these demands in all cases.

This report examines the Department’s current procedures and the statutory scheme in detail before offering recommendations for improvements to better serve the needs of the Commonwealth. The proposed solutions involve simplification of the existing background check laws and full automation of the Department’s processes. The report concludes with a suggested path towards self-funding for this endeavor.

Background

The Department, through its Central Criminal Records Exchange (CCRE) is the Commonwealth’s repository for all reportable¹ criminal arrests and dispositions made by state and local criminal justice agencies (criminal history records). This repository consists of over 11 million individual charges placed against almost 2.3 million distinct individuals. While it was originally conceived as a criminal justice database, Virginia law has long recognized the need to make the CCRE available to noncriminal justice agencies for the purpose of screening individuals for employment, volunteer positions, licensure, and other situations in which a person may have access to vulnerable populations.

¹ See Virginia Code § 19.2-390.

With the passage of time, the Commonwealth has granted increasing numbers of governmental and private entities varying degrees of access to these criminal history records, and this has created a complex statutory patchwork. Currently, there are more than 90 separate statutory provisions dealing with noncriminal justice background checks spread throughout 20 different Titles of the Virginia Code. These provisions establish more than a dozen distinct procedures for processing, screening, researching, redacting, and reporting criminal record information to the requesting entity. The intricacies of this statutory scheme demand an inefficient, multifarious workflow, which is especially problematic for a program that processes almost 500,000 background checks each year.

Noncriminal Justice Section (NCJ) Processes

Currently, Virginia law establishes two different types of background checks—Virginia criminal history records² or Virginia and national criminal history records.³ These are further subdivided into name searches (which search Virginia records only) and fingerprint searches (which can search Virginia only or Virginia and national records). Noncriminal justice agencies may be statutorily entitled to initiate a criminal records search using any, or all, of these means, depending on the type of agency and the purpose of the search.

Name searches are requests by an authorized governmental agency, private entity, or individual to receive Virginia criminal history record information. These requests can be initiated by governmental agencies upon verification of two forms of identification or by private entities and individuals upon the notarized request of the applicant. Depending on the authority granted by Code, some entities are entitled to receive the entire Virginia record, some receive only conviction data (meaning NCJ staff must research missing dispositions and redact all non-convictions), some receive convictions and indictments, some receive arrests and dispositions for felonies and Class 1 misdemeanors, and some are merely informed whether the subject of the record is qualified based upon a predefined list of barrier crimes. Adding another layer of complexity, there are two distinct but overlapping lists of barrier crimes that the NCJ staff must apply to name searches.

Fingerprint searches, in contrast, are typically national records checks, although individuals who submit a fingerprint card along with a notarized request can receive (or authorize their prospective employer/volunteer agency to receive) a full Virginia criminal history record in lieu of conviction data only. A fingerprint-based national records check

² For purposes of this report, where “Virginia criminal history records” and similar terms are used, those terms will refer to adult criminal history records only. Virginia law provides only one noncriminal justice purpose for which an agency may access an individual’s juvenile criminal history record: Employment or volunteer positions with emergency medical services agencies. See Virginia Code § 19.2-389.1. Although it is an outlier among the background check statutes, it is worth noting inasmuch as it requires the Department to adopt an additional unique procedure just for these searches.

³ “National criminal history records” and like terms are used in this report to refer to records submitted by the states, U.S. territories, and federal government and made available through the FBI’s Interstate Identification Index (III), regardless of the age of the offender. Virginia does not submit juvenile criminal history records to the III.

is authorized by law to specified governmental entities for enumerated purposes or to “qualified entities”⁴ that provide care to children, the elderly, or the disabled. As with name searches, the responses provided to these entities depend upon the authority they are granted. For example, the Commissioner of Financial Institutions receives the entire record; school boards receive only criminal record information that relates to felonies, Class 1 misdemeanors, or equivalent offenses in other states; and private schools are informed only whether their applicant is qualified according to a predefined list of Virginia or substantially similar out-of-state barrier crimes. Needless to say, the determination of whether an out-of-state offense is substantially similar, or has an equivalent punishment, to a Virginia offense requires difficult research and application of other jurisdictions’ laws.

Noncriminal justice agencies that routinely submit name search requests can establish an account to use the Department’s Noncriminal Justice Interface (NCJI), which provides an internet-based portal for requesting background checks. Under this procedure, the NCJI request is automatically processed through the Department’s Consolidated Applicant Tracking System (CATS) and the requesting agency is notified nearly instantaneously when an applicant has no criminal history. When a possible hit on an applicant is identified, the record must be researched by a member of the NCJ staff, who will determine whether the name and descriptors indicate that the subject of the record is the applicant in question. If the record is a match, the NCJ staff member will then research any missing dispositions by contacting the applicable courts and awaiting confirmation, redact any data from the record to which the requestor is not entitled, and return the record via U.S. Mail to the agency.

Individuals and those entities without NCJI accounts can fill and print the applicable form to initiate a name search on the Department’s website. In most such cases, this process is used by private businesses and individuals obtaining copies of their own records for reasons such as employment, adoption, international travel, citizenship, and residential rental applications. Upon completion of the form, the requestor prints it, at which time a barcode is generated to associate this printed record to the electronic data.⁵ The requestor then mails or hand-delivers the form along with the required payment to the Department. When an individual obtains his own record for one of these purposes (as opposed to the employer obtaining it upon verification of identity), he is required to take the additional step of having the form notarized before mailing it.⁶

Upon receipt of completed background check requests, NCJ staff ensure that the forms are properly completed and contain appropriate payment. Incomplete forms are

⁴ See Virginia Code § 19.2-392.02.

⁵ The Department continues to accept and hand-enter the data from older versions of the criminal record request form (SP-167) that lack the computer-generated barcode when they are mailed in by individuals who are incarcerated or in need of a background check for visas or immigration purposes. In these cases, the data on the form must be hand-entered into CATS by NCJ staff.

⁶ Virginia Code § 19.2-389(A).

returned, unless minor errors can be corrected by contacting the requestor. Credit card payments are processed by manually entering the credit card number into the Department's vendor's web interface; cash, check, or money order payments are tallied by a staff member and verified by a supervisor. The barcodes on each request form are scanned to populate the data from the CATS system, and a quality-control check is made to ensure that the data imported correctly. The system then conducts the name search and, after any required research as outlined above, the results are returned to the requestor by mail. In urgent cases (such as is often the case for international travel), the requestor can pick up the results or NCJ staff will scan and send them via secure email.

Fingerprint searches are initiated by the receipt of fingerprints via a Live Scan terminal or FBI applicant fingerprint card. Agencies that have Live Scan terminals or contracts with Fieldprint, a private corporation that provides Live Scan fingerprinting services under state contract, can submit their background check requests electronically, at which point the Department's fingerprint examiners classify the fingerprints and confirm any possible identifications made by the Department's Automated Fingerprint Identification System (AFIS).⁷ AFIS then transmits the prints electronically to the FBI where a similar process is followed to identify any national records associated with the applicant's fingerprints. Any matches are then provided to the NCJ staff for retrieval of the criminal record and any required research and redactions. The process is identical for agencies that submit FBI applicant fingerprint cards, except that NCJ section staff members are required to screen each received fingerprint card for completeness and inclusion of payment, process payments as described above, and enter the applicant's demographic data into CATS before a fingerprint search can be initiated.

Proposed Solutions

The complexities of the NCJ processes described above can be largely, if not entirely, remediated through a comprehensive, policy-driven simplification of the legal framework in tandem with robust automation of submission, billing, fingerprint, and record search systems, as described below.

Recommendation 1: Replace the CATS system

CATS was developed approximately seven years ago merely as a computerized tracking system for logging and accessing name search and fingerprint-based background requests under the current labor-intensive, manual procedures. Since CATS was not designed with full automation in mind, it lacks the programmatic capability to receive name search requests or return results electronically for the

⁷ The fingerprint identification process actually includes both name search and fingerprint search features. The AFIS system automatically conducts a name search to provide additional candidates that might not be found in a technical search of poor-quality fingerprints. This allows examiners to ensure that all possible fingerprint matches are considered when making an identification. Results are only returned based on fingerprint identification.

majority of name searches, which use the notarized form required by Virginia Code § 19.2-389(A). Further, while CATS does provide the ability for statutorily entitled agencies⁸ to submit name searches through the NCJI interface, any criminal history records located as a result of these searches must be manually researched, redacted, printed, and mailed to the requesting agencies. Even fingerprint-based checks submitted electronically through Live Scan, while tracked in CATS, are dependent upon these manual processes to return criminal history records.

The Department envisions that a fully automated replacement system would allow an authorized agency or individual to access a web-based portal to complete a criminal record search request and pay the required fee via credit card. Individuals who submit name search requests, to the extent that name searches are retained following implementation of these recommendations, would be provided by email with a unique set of login credentials for accessing a secure web portal to retrieve the criminal history record. Those making fingerprint-based record requests without access to a Live Scan terminal to automate the data transmission would receive a barcoded confirmation printout that could be mailed along with the fingerprint card to the Department for processing. Upon receipt, the AFIS staff would scan the barcode prior to processing the fingerprints so that the automated system would associate the correct applicant to the fingerprint results. As with name searches, the resulting record would be made available in a password-secured web portal for the applicant to access. Faced with a backlog of six to seven months in processing noncriminal justice fingerprint requests, the Federal Bureau of Investigation (FBI) recently implemented a similar automated system, and they are now able to process record requests in less than five days.

Unfortunately, developing such complex automated processes would require major programmatic changes that would be difficult, if not impossible, to append to the existing CATS codebase, which suffers not only from its design limitations but also from many defects that have gone unresolved since implementation. As a result of the limited resources and high demand for other projects, the Department's Information and Communications Technology Division has been unable to address fifty-four remaining bugs and defects in CATS. These defects create additional strain for NCJ staff, who sometimes have to resort to even more complex manual processes to avoid the errors and omissions that CATS would otherwise cause.

Further, it is not only the rudimentary nature of the existing CATS platform that limits additional development. Because criminal history records contain both criminal justice information and personal identifying information, FBI CJIS Security Policy⁹ and

⁸ Virginia Code § 19.2-389 authorizes certain agencies to obtain Virginia criminal history records on certain applicants for employment or licensure without the notarized authorization of the subject of the record.

⁹ Version 5.7 (August 16, 2018).

the Commonwealth's Information Security Technology Policy¹⁰ require meeting specific encryption standards governing data transmission that cannot be supported by the current CATS system.

In order for the Department to significantly improve business processes and return results to requestors within three business days, CATS must be replaced with a system that is programmed to automate the entire background check process. An automated system meeting these requirements would require a total rewrite of the CATS code and ultimately be more costly than replacing CATS with a system that is designed for full automation. In addition, there is considerable risk associated with significant changes to a system. Drastic reprogramming breaks code within the application, causing additional bugs and defects that were not present prior to the enhancements. Due to limited resources and commitments to other projects, the Department's Information and Communications Technology Division does not currently have the resources to take on another major project such as this. As such, from a practical and financial standpoint, the Department feels strongly that a vendor-developed and supported replacement system is necessary to fully automate the noncriminal justice background check process.

The Department has received a demonstration from a vendor that is currently replacing Oregon's background check system. Based on those discussions, we estimate that a replacement system will cost approximately \$3 million. This cost includes an automated billing system, which is critical to streamline the entire process and return results within the preferred three business day timeframe. This cost, while substantial, must be viewed in the context of background check revenues: Noncriminal justice background check fees contribute more than \$3.5 million annually to the Commonwealth's General Fund. The Department proposes to retain all monies collected for background checks until a replacement system is procured.

Simply put, while the expenses of automation are not insignificant, technology must be leveraged for the Department to reach its goal of returning background check results within three business days. Achieving this standard will demonstrably improve the economic environment and quality of life for the citizens of the Commonwealth by ensuring, for example, timely engagement of employees and adoption of children. Further, because the background check fees create the opportunity for a self-funded and self-sustaining program, the costs of these enhancements can be borne by their primary beneficiaries without any increase in fees.

Recommendation 2: Eliminate the requirement that some background check requests be notarized

¹⁰ Commonwealth of Virginia Information Technology Resource Management Policy SEC 519-00.

As described above, with the exception of those agencies that have NCJI accounts, name searches are initiated and conducted through a long series of manual processes. In most such cases, the criminal record is being requested by an individual for a myriad of possible public or private purposes or by a prospective employer with the consent of the individual. In these cases, Virginia law requires that the individual who is the subject of the record must submit a notarized request as proof that the requestor is the record subject.¹¹ This notary requirement imposes additional burdens on requestors, and it virtually eliminates options for automating these searches.¹²

While the Department shares the public concern for ensuring that the identity of the record subject is properly verified in these cases, technological advancements now provide alternative means of vetting a subject's identity. For example, knowledge-based authentication systems establish a person's identity by asking a series of questions, often associated with an individual's credit history, to which only the individual would know the answer. These systems use sophisticated algorithms and analytics to validate the requestor's identity based on the responses provided.

With the elimination of the current notary requirement, the Department could adopt a fully automated name search system, either as part of the automated system described in Recommendation 1 or as a limited automation of those searches that previously required notarization. The Department believes that incorporating this recommendation into a fully automated system as described above provides a more cost-effective solution compared to the reduced economy of scale and circumscribed benefits conferred by pursuing a partial automation of existing processes. Alternatively, transitioning to the exclusive or near-exclusive use of fingerprint-based background checks, as described in Recommendation 3, below, would resolve the issues presented here.

Recommendation 3: Replace statutory authorization for name searches with fingerprint-based searches in most cases

Name searches are, by definition, based upon an exact match of the record subject's name and date of birth. Because none of the sophisticated name matching algorithms used in criminal justice searches are employed, individuals who may have used a different spelling of their names or variances in their dates of birth will evade detection. Likewise, while maiden names can be captured by the requesting agency, they are not required. These omissions mean that people who misrepresent their identities at arrest, conceal their identities from employers, or who are the beneficiaries of data entry errors, can effectively hide their disqualifying convictions from employers.

¹¹ Virginia Code § 19.2-389(A).

¹² Such options are not fully eliminated, as vendors such as NotaryCam are willing to provide electronic notary services for individuals who are willing to pay an additional fee (currently \$15). The Department is implementing NotaryCam as an option but considers it too significant a financial obstacle to require this process. The Department does not believe that Recommendation 1 in this report can be implemented without the concurrent adoption of Recommendation 2.

These “false negatives” mean that many potentially dangerous or unfit persons may gain access to sensitive employment positions.

Similarly, the potential for “false positives” presents another danger of name searches. Although the NCJ staff attempts to distinguish potential matches of common names based on other descriptive information, it is not always possible to make a final determination without fingerprints. When staff members detect an ambiguity in a potential match, they will request that the applicant provide fingerprints for a positive identification before releasing the record. However, given that the NCJ staff processes well over 250,000 name searches each year, there is a substantial likelihood that in some cases applicants with common names are unknowingly misidentified as being the subject of another person’s criminal history record. In these instances, the employer may be falsely led to believe that the applicant has a criminal history record. While a record challenge process exists for resolving these issues, the inconvenience to the applicant is considerable (to say nothing of the record subject whose information was erroneously disseminated).

In addition to creating the risk of false positives and false negatives, name searches are also much narrower in scope than fingerprint searches. The FBI requires fingerprints to process a national records search; therefore, background checks that rely upon name searches only receive Virginia records. As a result, governmental agencies that conduct name searches are not privy to an applicant’s potentially disqualifying out-of-state convictions. If the goal of making criminal history records available to noncriminal justice agencies is to prevent unfit persons from having access to vulnerable populations, this omission is disquieting. Since the FBI will allow governmental agencies to receive national criminal records concerning employees in sensitive positions and applicants subject to licensure,¹³ the curtailment of name searches in favor of more widespread authorization to conduct fingerprint searches would accomplish laudable public safety goals.

The transition to a primarily fingerprint-based background check system would also serve noncriminal justice agencies well by eliminating many sources of confusion created by the current process. Some noncriminal justice agencies are currently authorized to conduct name searches for some purposes and fingerprint searches for others. Because not all agencies understand or attend to the fact that the way in which they submit their search will determine the extent of the record they are provided, these agencies sometimes request (and thus receive) either more or less criminal history information than they are legally entitled to.

¹³ Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act of 1973, Pub. L. No. 92-544, 86 Stat. 1115. While this discussion focuses on governmental agencies’ access to criminal history records, the arguments hold true for nongovernmental “qualified entities” that provide care to, or placement of, children, the elderly, or the disabled. Under the National Child Protection Act of 1993, 34 U.S.C. § 40101, *et seq.* (2017), these entities are entitled to national criminal history information (in some cases including the full record) to determine whether employees, volunteers, owners, operators, and those with unsupervised access to vulnerable populations should be entrusted with responsibility for their safety and well-being.

While noncriminal justice agencies would benefit significantly from the improvements in background check accuracy and completeness with the adoption of a statutory scheme that substantially deemphasizes name searches, they would also benefit from more rapid responses. As described above, the current name search process requires a cumbersome series of manual steps. In contrast, because Live Scan applicant fingerprints are received through an automated process, the tedious data retrieval, verification, and payment procedures would be eliminated. While these steps are not as lengthy as the research and redaction processes that cannot be avoided under current law, even incremental efficiencies are important in such a high-volume environment. Further, name search requests that return ambiguous possible matches to a criminal record require substantial delays to resolve, possibly including the necessity of resubmitting the request with fingerprints. As such, the improvements in timeliness offered by fingerprint-based searches, while modest, can be important for employers in need of filling vacant positions, employees who are seeking to earn a living, adoptive parents longing to complete their families, and international travelers whose plans necessitate an immediate response.

With the possible exceptions of the Virginia Board of Elections and general registrars, who conduct name searches to verify voter eligibility, and shipyards, which conduct name searches on facility visitors, the individuals and entities currently conducting name searches could submit a fingerprint-based request without additional difficulty. While some of these agencies would only be entitled to the Virginia record with these requests, they would, at least, get the correct Virginia record. The limited number of name searches that would remain for those agencies that absolutely had to have them would be an insignificant burden compared to current processes.

It would not have been viable to reduce the availability of name searches in the past, when Live Scan machines were only found at criminal justice facilities, often in secured booking areas. However, because Fieldprint is now under state contract to provide noncriminal justice Live Scan fingerprinting at locations that are within no more than 35 miles of every resident of the Commonwealth, the impediments to fingerprint-based background checks are no longer substantial. For a reasonable fee,¹⁴ anyone can receive a more accurate and complete background check than current processes allow without significant inconvenience.

The Department recognizes, however, that a private Live Scan vendor is not the perfect solution for everyone who needs a background check. In many cases, individuals will still have easier access to a criminal justice agency Live Scan terminal or to a law enforcement agency that can roll their prints with ink. As discussed in Recommendation 1, the Department could easily accommodate these individuals' requests through an automated system that generates a barcoded confirmation to submit along with an applicant fingerprint card.

¹⁴Fieldprint is currently charging \$8.72 for governmental entities and \$15.00 for nongovernmental entities. This is comparable to the \$10.00 that law enforcement agencies are permitted to charge under Virginia Code § 19.2-392.

The Department anticipates that the number of fingerprint-based background checks would double if name searches were substantially eliminated. This would require an upgrade to the transmission and processing capacity of the Department's AFIS system. The Department's AFIS vendor, NEC Corporation, has estimated the cost of this upgrade at \$3.6 Million; however, because the current AFIS system is near contract expiration and end-of-life, a medium-term system replacement is inevitable. As discussed in Recommendation 1, the existing background check fees generate sufficient revenue to the Commonwealth to cover the cost of an AFIS system upgrade in a reasonable timeframe.

By pursuing this AFIS upgrade in tandem with a replacement background check system, the Department will not only address the background check inefficiencies more quickly but can also implement Rap Back, which will provide even greater protections for noncriminal justice agencies. Rap Back allows agencies to subscribe a set of fingerprints to the FBI's national records so that if at any time during the designated subscription period an employee or license-holder is arrested, the agency will be notified. As such, Rap Back will be transformative for the noncriminal justice community: No longer will agencies have to rely on a once-in-time snapshot of criminal activity. Rather, they will be made aware in real time when someone they subscribed to the system is arrested for a barrier offense anywhere in the country. In addition, applicants who are subscribed within the Rap Back system could have their fingerprints re-subscribed to a different eligible agency when they change employment. This would reduce the burden on teachers, nurses, and other professionals when they take new jobs within the same field.

Recommendation 4: Eliminate barriers to record access among similarly-situated agencies

In tandem with adoption of any or all of the recommendations discussed above, the Department recommends changing the statutory scheme so that, at a minimum, all governmental agencies are provided with access to a full Virginia criminal history record. In the current environment, local school boards are only authorized to receive felony and Class 1 misdemeanor criminal record information on prospective employees,¹⁵ while the human resources department in the same locality may receive a full national record on all other local government employees.¹⁶ Similarly, local social services boards are only authorized to receive data on barrier crime convictions¹⁷ when approving home-based services and foster care providers;¹⁸ whereas, some private employers such as licensed home care providers can receive the entire Virginia record.¹⁹ As a final example in a list that is by no means exhaustive, an individual cannot provide consent for his employer to obtain anything other than his conviction

¹⁵ Virginia Code § 22.1-296.2.

¹⁶ Virginia Code §§ 15.2-1503.1, 15.2-1505.1.

¹⁷ The applicable barrier crimes are defined in Virginia Code § 19.2-392.02(i).

¹⁸ Virginia Code § 63.2-1601.1.

¹⁹ Virginia Code § 32.1-162.9:1.

data,²⁰ but he could obtain his own full Virginia criminal history and then disseminate it to his employer.²¹

Not only do these apparently arbitrary distinctions limit some agencies' access to information that might bear upon the employment decision, they also create an additional burden on NCJ staff. Under the current statutory scheme, the NCJ section is forced to redact records according to six different standards. Further, current law demands that the NCJ staff redact some agencies' national record responses to exclude offenses that are substantially similar to, or which have an equivalent punishment to, Virginia barrier crimes. As discussed above, the careful legal analysis required to make this determination adds considerable time to the background check process.

The Department believes that, in light of the many reasons for which government agencies are granted access to full criminal records, there is no compelling reason for continuing to burden the system with the inefficiencies that result from withholding that same access from other agencies.²² In addition, individuals should be able to provide written direction in a background check request for the Department to provide their entire record to an employer, just as they can obtain their record and use it as they choose.

There is no doubt that the Department would realize even greater efficiency gains if private employers could directly request an applicant's full criminal history, including prior arrests and unavailable court dispositions. However, the Department recognizes that the public policy considerations associated with this particular change go beyond the scope of this report. Whether putting more data into the hands of the prospective employer enables wiser decisions about fitness for employment or results in decisions that undermine an exonerated applicant's ability to pursue gainful employment is a determination for policymakers. What is clear, however, is that decisions to withhold portions of a criminal history record from a prospective employer should take the additional workload on NCJ staff into consideration.

Conclusion

In requesting this report, the General Assembly invited the opportunity for a long-overdue comprehensive rethinking of the noncriminal justice background check process. With each passing year, additional noncriminal justice agencies request statutory authority to conduct background checks. While the Department makes lawmakers aware of the need for additional personnel to address this increased demand for our services, it is clear that personnel resources alone will not suffice over the long term. To the contrary, streamlining of the legal framework and full automation

²⁰ Virginia Code § 19.2-389(H).

²¹ Virginia Code § 9.1-132; 6 VAC 20-120-50(B)(4)(a).

²² For clarity, many agencies that receive the full criminal record are still required by law to make employment and licensure decisions based upon predefined barrier crimes.

of Department processes will be necessary to fully address the public need for background checks.

The recommendations presented herein have endeavored to provide a holistic examination of the interrelated statutory and procedural impediments to greater efficiency. Taken as a whole, these recommendations are estimated to cost less than \$7 million over approximately three years. These costs, while substantial, can be borne by capturing the Commonwealth's portion of the existing background check fees, resulting in a self-sustaining program. The Department believes that this approach provides the greatest benefit to the citizens of the Commonwealth and welcomes the opportunity to work with members of the General Assembly towards full adoption of these recommendations.